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as such to ejection under the Act. The order of the appellate authority is accordingly hereby set aside and Tara Singh is ordered to be ejected forthwith from the premises in question. This revision is thus accepted with costs. Counsel fee Rs. 300.

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S.C.K.

*Before V. Ramaswami, C.J. and G. R. Majithia, J.*

RAM SARUP SEHGAL,—Appellant.

*versus*

STATE OF HARYANA AND ANOTHER,—Respondents.

*Letters Patent Appeal No. 100 of 1988*

May 24, 1988.

*Payment of Gratuity Act (XXXIX of 1972)—Section 1(4)—Gratuity—Payment of—Act not applicable to establishment—Employee retired from service—Subsequent enforcement of Act—Claim of such employee—Competency of such claim.*

*Held, that the Payment of Gratuity Act, 1972 is applicable only to those persons who retired after the commencement of the Act in respect of establishment, and not in respect of those who had retired before the enforcement of the Act. (Para 6).*

*Letters Patent Appeal under Clause X of the Letter Patent against the order dated 18th January, 1988 passed by Hon'ble Mr. Justice J. V. Gupta, in Civil Writ Petition No. 1443 of 1986.*

U. S. Sahni, Advocate, for the Appellant.

#### JUDGMENT

This is an appeal against order of the learned Single Judge who dismissed Civil Writ Petition No. 1443/1986.

(2) The appellant retired from the service of Municipal Committee, Ladwa, in the State of Haryana on 8th December, 1971. The Payment of Gratuity Act, 1972, was brought into force by the Central Government by a notification u/s 1(4) of the Act with effect from 16th September, 1972.

Ram Sarup Sehgal v. State of Haryana and another  
(V. Ramaswami, C.J.)

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(3) The appellant has stated in the writ petition that he applied to the Municipal Committee, Ladwa, in the year 1972 itself for payment of gratuity as per the provisions of the Act but the same was declined on the ground that no gratuity was payable to the municipal employees in the State for the reason that the Municipal Committee was not an 'establishment' under the Act, and that in any case the Act was not applicable to the employees who retired before the Act was notified to have come into force. The appellant retired in the year 1971. He chose to file the writ petition in the year 1986 for the issuance of a writ of *mandamus* directing the Municipal Committee Ladwa to pay gratuity to him. The learned Judge who heard the case took note of the fact that the writ petition was filed after a period of nearly fifteen years, and that in any case the ratio of the judgment in *Kundan Lal Narang vs. The State of Haryana* (1) was that persons who had retired from service after enforcement of the Payment of Gratuity Act 1972 were only entitled to the payment of gratuity in accordance with the provisions of the Act and in that view dismissed the writ petition.

(4) The learned counsel referred to a decision of the Supreme Court in *D. S. Nakara vs. Union of India* (2) relating to the retiring pension, and claimed that since the gratuity was a payment in lieu of the services rendered by an employee in the past, he is entitled for payment of the gratuity. We are unable to agree to this argument. It was a statutory right conferred for the first time under the Act that came into force in the year 1972, which was not in existence prior thereto. The Act is, on terms, applicable only to those cases of retirement subsequent to the enforcement of the Act. From a reading of section 1(3) of the Act, it is clear that the Act shall apply to every factory, mine, oilfield, plantation, port and railway company, and every shop or establishment as mentioned in sub-section (3) (b) of section 1 of the Act, and such other establishments or class of establishments, as envisaged by sub-section (3) (c) and sub-section (3-A) of section 1 of the Act. If the contention of the learned counsel for the appellant were to be accepted, a similar provision relating to the applicability of the Act is not necessary at all because if it is an establishment it will apply to everybody whether they retired before or after the commencement of the Act. The bringing in of the notification and way effect the applicability of the Act to the other establishments.

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(1) 1987 (2) P.L.R. 431.

(2) AIR 1983 S.C. 130.

(5) Apart from this we are also of the view that *Kundan Lal Narang's case* (supra) is a case relating to a set of employees of a municipal committee who had retired after the enforcement of the Act. The claim for gratuity was denied to them on the ground that the local authorities were notified as 'establishments' under the Act only subsequently. The ultimate order of the learned Judges was that the local authorities were 'establishments' within the meaning of the Act and the notification was unnecessary and that, therefore, all the municipal employees in Haryana who had retired after the coming into force of the Act were entitled to payment of gratuity in accordance with the provisions of the Act.

(6) The learned counsel contends that it is not stated any where in the judgment that "only" those employees who had retired after the coming into force of the Act would be entitled to the gratuity, and, therefore, the ratio of the judgment should not be treated as holding that only those employees who had retired after the enforcement of the Act were entitled to payment of gratuity. The learned counsel may be right in this submission but we would take it that if the ratio were otherwise, the learned Judges could have simply decided it without going into the question whether the notification was valid or was necessary, and even if the Act had been brought into force by the notification of the Government declaring the local authority as an establishment for the purpose of the Act for the time even then all the petitioners in the case are entitled to gratuity because even with reference to that date when the notifications was made bringing the Act into force in regard to the establishment those employees who retired earlier to that date also could be entitled to the gratuity. We are satisfied that the Act is applicable only to those persons who retired after the commencement of Act in respect of establishment, and not in respect of those who had retired before the enforcement of the Act. The appeal accordingly fails and is dismissed.

**S.C.K.**

*Before M. M. Punchhi and M. R. Agnihotri, JJ.*

H. L. RANDEV AND OTHERS,—Petitioners.

*versus*

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH  
AND OTHERS.—Respondents.

Civil Writ Petition No. 7013 of 1987 and

Civil Misc. No. 5454 of 1987.

May 27, 1988.

*Punjab Superior Judicial Service Rules, 1963—Rules 7 and 12—  
Expression 'post in the service'—Meaning of—Quota for promotees*